

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
JEFFERSON RIVER BASIN (41G)
PRELIMINARY DECREE

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CLAIMANTS: Chicago Milwaukee St Paul & Pacific RR LLC

CASE 41G-0554-R-2023

41G 195423-00

NOTICE OF INTENT TO APPEAR: City of Three Forks

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Claim 41G 195423-00 appeared in the Basin 41G Preliminary Decree issued February 15, 2018. The DNRC placed an issue remark on the claim that must be

resolved by the Court pursuant to statute. The City of Three Forks filed a Notice of Intent to Appear (NOIA) to claim 41G 195423-00.

2. The issue remark appearing on claim 41G 195423-00 states:

THE PURPOSE OF THIS CLAIM IS UNCLEAR AS MULTIPLE PURPOSES HAVE BEEN CLAIMED. THE CLAIMED PURPOSES INCLUDE DOMESTIC AND RAIL. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

In its January 13, 2023 Order Consolidating, the Court explained that prior decisions have established that more than one purpose may be identified on the same water right abstract and that the issue remark did not overcome the prima facie status of the claim.

A deadline was set for the NOIA party to indicate whether it had any remaining concerns with claim 41G 195423-00. On January 25, 2023, the City of Three Forks filed a comment indicating it did not have further concerns regarding claim 41G 195423-00.

CONCLUSIONS OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 85-2-227, MCA. No evidence was presented to overcome the prima facie status of the claim.

2. All issue remarks to claims that are not resolved through the filing of an objection must be resolved pursuant to § 85-2-248, MCA. § 85-2-248(2), MCA. However, the requirement to resolve issue remarks does not eliminate the prima facie status granted to water rights, nor does it change the burden of proof required to modify or invalidate a claim. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015. The issue remark appearing on claim 41G 195423-00 does not overcome the prima facie status of the claim and should be removed.

RECOMMENDATIONS

1. The issue remark should be removed from claim 41G 195423-00.

A Post Decree Abstract of Water Right Claim is served with the Report to confirm that the modifications have been made in the state's centralized database.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

Chicago Milwaukee St
Paul & Pacific RR LLC
%Montana Rail Link, Attn: Joe Gentry
PO Box 16624
Missoula, MT 59808

Susan B. Swimley
Attorney & Counselor at Law
1807 W Dickerson Unit B
Bozeman, MT 59715

Service via Electronic Mail

Dana Elias Pepper
Bina R. Peters
River and Range Law, PLLC
P.O. Box 477
Bozeman, MT 59771
(406) 599-7424
dana@riverandrangelaw.com
bina@riverandrangelaw.com
office@riverandrangelaw.com

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 195423-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: CHICAGO MILWAUKEE ST PAUL & PACIFIC RR LLC
%MONTANA RAIL LINK, ATTN: JOE GENTRI
PO BOX 16624
MISSOULA, MT 59808
RICHARD B. OLGILVIE TRUSTEE OF PROPERTY

Priority Date: NOVEMBER 30, 1936

Type of Historical Right: USE

Purpose (use): COMMERCIAL
THIS RIGHT IS ALSO USED FOR DOMESTIC PURPOSES.
RAILROAD PURPOSES

Flow Rate: 1.00 GPM

Volume: 0.81 AC-FT

Source Name: GROUNDWATER

Source Type: GROUNDWATER
ALSO KNOWN AS WILLOW CREEK WELL

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNWNE	19	1N	1E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWNWNE	19	1N	1E	GALLATIN